ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review	)	IB Docket No. 00-202
	)	
Policy and Rules Concerning the International, Interexchange Marketplace	)	

COMMENTS OF
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

I. Introduction.

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby respectfully submits these Comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the proceeding captioned above.[1] In this proceeding, the Commission proposes to extend the complete detariffing regime previously adopted for domestic, interexchange services to the international services of non-dominant, interexchange carriers, including U.S. carriers classified as dominant due to foreign affiliations. The Commission also proposes to limit the filing of carrier contracts under Section 43.51 of the Commission's Rules to situations where filing is necessary to promote competitive market conditions in the United States. CompTel is the principal industry association representing U.S. and international competitive telecommunications companies and their suppliers. As such, CompTel has a direct interest in this proceeding.

[1] FCC 00-367, rel. Oct. 18, 2000.

As discussed below, CompTel supports both of the Commission's proposals. In particular, CompTel strongly urges the Commission to adopt an order as quickly as possible that will permit carriers to detariff both domestic and international services simultaneously as early as January 31 and that establishes a nine (9) month transition period for those carriers that need additional time to cancel their international tariffs.

II. The Commission Should Adopt an Order No Later Than Early January 2001 That Mandates Complete Detariffing for the International Services of Non-Dominant Carriers and That Affords These Carriers Maximum Flexibility in Implementing the Detariffing Regime.

A. Without question, the FCC has the authority to require international carriers to cancel their tariffs, and canceling such tariffs will serve the public interest.

In the Notice, the Commission proposes to extend the complete detariffing regime that it has adopted for domestic, interexchange services to the international services of non-dominant, interexchange carriers, including U.S. carriers classified as dominant due to foreign affiliations.[2] CompTel supports the Commission's proposal. In light of the *MCI WorldCom* decision,[3] it is clear that the FCC generally has the authority under Section 10 of the 1996 Telecommunications Act to require carriers to cancel their tariffs and provide service pursuant to commercial contract arrangements, regardless of the jurisdictional nature of the service being provided (*i.e.*, domestic or international).

Furthermore, CompTel agrees with the Commission's analysis that the three criteria that must be satisfied for the Commission to invoke its forbearance authority under Section 10 are indeed satisfied by the complete detariffing of international services. As the Commission

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2 Notice at ¶ 5.

3 *MCI WorldCom, Inc. et al v. FCC*, 209 F.3rd 760 (D.C. Cir. Apr. 28, 2000).

observes in the Notice, increased competition both here and abroad in the provision of international services have reduced the likelihood of dramatic price increases or wide-scale proliferation of unfavorable terms and conditions offered to consumers.[4] As such, tariff filing requirements are not necessary to ensure that the charges, practices, classifications, or regulations for international services are just and reasonable and not unjustly or unreasonably discriminatory. Indeed, as the Commission tentatively concludes in the Notice, detariffing will better protect consumers against rates, terms and conditions that violate the Communications Act because it will permit carriers to respond to price and service changes in an unregulated manner.[5] Under these circumstances, complete detariffing of international services clearly serves the public interest. Accordingly, the Commission's proposal to mandate complete detariffing for international services is both lawful and appropriate.

B. The Commission Should Take All Steps Necessary to Enable Carriers to Cancel Their Domestic and International Tariffs at the Same Time, While Affording Carriers Who Need More Time at Least Nine (9) Months to Transition.

In CompTel's view, the only real question with respect to international detariffing is the timing of implementation. To that end, CompTel strongly urges the Commission to move quickly to adopt an order that mandates the complete detariffing of international services.

To minimize the burdens on both the carriers and the Commission in implementing international detariffing and to facilitate adoption of an order, the rules adopted in the order should mirror the rules finally adopted by the Commission for domestic detariffing. Such order should be adopted no later than January 2001 and made effective upon adoption, to enable those

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4 Notice at ¶ 7.

5 Notice at ¶¶ 15-16.

carriers detariffing domestic services on January 31 to detariff international services at the same time. The pleadings filed in response to the Commission's request for comment on the proposed transition plan for domestic detariffing make clear that customers – multinational business customers as well as consumers – perceive long-distance and international service as a single product, and thus are confused by the need to have both a tariff and a contract for a single deal.[6] Furthermore, unless carriers detariff domestic and international services at the same time, carriers will have to incur many of the costs associated with detariffing several times, which ultimately will have a negative impact on customer rates. If the Commission adopts an order permitting carriers to detariff international as well as domestic services on January 31, 2001, many carriers will be able to detariff domestic and international services simultaneously, thereby minimizing customer uncertainty and confusion and reducing the impact of the costs of detariffing on customer rates.

At the same time, the Commission should establish a nine (9) month transition period (commencing with the effective date of the order) for carriers to adjust to international detariffing. Many carriers will not be in a position to detariff both domestic and international services simultaneously. In particular, smaller carriers may have exhausted their limited resources over the last six months in preparing to detariff domestic services. These carriers will need additional time to budget for and perform the work necessary to prepare customers and cancel international tariffs. The Commission has previously recognized that nine months is

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6 *See, e.g.*, in *Policy and Rules Concerning the Interstate, Interexchange Market; Implementation of Section 254(g) of the Communications Act of 1934, as amended,* CC Docket No. 96-16, AT&T Comments at 2-3 (May 31, 2000); Comments of Econobill Corp. at 2 (May 31, 2000); Comments of Sprint at 6-7 (May 31, 2000); Comments of WorldCom at 17 (May 31, 2000).

sufficient to provide for an orderly transition.[7] Accordingly, the FCC should include a nine-month transition period for international detariffing in its order.

III. As Proposed in the Notice, the Commission Should Clarify That the Carrier Contract Filing Requirement in Section 43.51 of the Commission' s Rules Applies Only When One of the Contracting Parties Has Market Power.

CompTel supports the FCC's proposal to clarify Section 43.51 of the Commission's Rules, which requires carriers to file copies of carrier contracts with the Commission. Under the Commission's proposal, Section 43.51 would apply only to U.S. carrier contracts for common carrier service between the U.S. and foreign points involving (1) a foreign carrier that has market power in its foreign market, or (2) a U.S. carrier that has been classified as dominant on any route included in the contract, except for U.S. carriers classified as dominant on a particular route due only to a foreign carrier affiliation.[8]

There is no benefit to be obtained from the filing of carrier contracts except in the circumstances enumerated by the Commission. The primary reason to require carriers to file their contracts with the Commission is to provide a mechanism to assist in determining whether carriers are following the Commission's Rules or otherwise acting in an anti-competitive manner.[9] The Commission correctly recognizes in the Notice that there is a realistic chance of anticompetitive behavior only where the parties involved are foreign carriers with market power or U.S. carriers that have been classified as dominant on a relevant route for reasons other than

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7 *See Policy and Rules Concerning the Interstate, Interexchange Market; Implementation of Section 254(g) of the Communications Act of 1934, as amended,* CC Docket No. 96-16, Second Report and Order, 11 FCC Rcd 20730, 20779 (1996).

8 Notice at ¶ 32.

9 Notice at ¶ 34.

foreign affiliation.[10] Thus, no purpose is served by requiring the filing of customer contracts except in these cases. Should the Commission believe that two carriers that are not required by Section 43.51 to file their carrier contracts are acting in an anti-competitive manner in their provision of international service, the Commission can always obtain copies of the relevant contracts and seek remedies through other means – *e.g.*, through the Section 208 complaint process, or under Section 211.[11]

Requiring the filing of all carrier contracts imposes undue burdens and unnecessary costs on both the Commission and the carriers to the ultimate detriment of U.S. consumers. Increasing numbers of carriers here and abroad offer international services. As such, the administrative burden associated with filing, processing, and storing carrier contracts that concern international services is enormous, both for the Commission and for the telecommunications industry as a whole. The compliance burden is particularly onerous for smaller U.S. carriers, as unlike large, well-established carriers, these operators do not have the resources to devote to organizing and filing with the Commission the quantities of paperwork that would be involved. Thus, requiring all carrier contracts to be filed at the FCC has an inordinately severe impact on smaller carriers to the ultimate detriment of competition in the market for international services.

In sum, there is no discernible benefit but significant costs associated with requiring all carriers to file all contracts concerning international services with the Commission. As such, the Commission should modify Section 43.51 as proposed to limit the filing of international services contracts to those that involve foreign carriers with market power or U.S. carriers classified as dominant for reasons other than foreign affiliation.

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10 Notice at ¶¶ 34-38.

11 Notice at ¶ 34.

IV. Conclusion.

For these reasons, CompTel urges the Commission to adopt an order as quickly as possible establishing a nine (9) month transition period for canceling international tariffs and permitting carriers to cancel both domestic and international tariffs on January 31. In addition, the Commission should clarify Section 43.51 as proposed in the Notice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of November 2000, a true copy of the foregoing Comments of The Competitive Telecommunications Association was hand-carried to the following:

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